

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 371.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-13, drawn to an implant.

Group II, claim(s) 14-21, drawn to a method.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: each of the independent claims in groups I and II has a common technical feature, connected by the language "as defined in claim 1". However, the technical features of claim 1 do not constitute special technical features because they fail to provide a contribution over the prior art, as evidenced by U.S. Patent 5,672,175 (US '175). US '175 discloses an implant useful for treating rotational malfunction of the spinal column wherein said device is capable of applying pure rotational progressive forces (see Abstract), comprising;

- a. a linear plate (4a or 4b) having a longitudinal axis adapted to extend from an apex of the upper scoliotic curve to an apex of the lower scoliotic curve (col. 8,

II. 46-50; embodied by treating a deformation of the scoliotic type), having predetermined axial dynamic de-rotational properties (col. 9, II. 22-24), having a spring-like means to torque in axial plate (col. 9, II. 6-13; embodied by elastic bending forces or elements 21-24) and permitting free movements in coronal, longitudinal and/or sagittal directions (col. 9, II. 6-13; embodied by allowing physiological movements);

b. at least two anchors (55) interconnecting said plate with the spinal column, each of said anchors having proximal and distal portions;

i. said proximal portion (area of 5a or 5b) is having means (5a or 5b) to be reversibly affixed on any position along the longitudinal axis of said plate (col. 9, II. 53-61);

ii. said distal portion (area of 61 and 71) having a connecting means to entrap the spinal column in at least two locations (col. 16, II. 23-26; Fig. 11; screw 61 and hook 71); and

c. clasping means (65), adapted to effectively clasp the spinous process portion of the spinal column (seen in Fig. 8).

Therefore, the holding that these two groups do not relate to a single inventive concept is proper.

3. Two telephone calls were made to the attorney of record, Derek Richmond, on 18 October 2007 and 13 November 2007 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jay R. Sigler whose telephone number is (571) 270-3647. The examiner can normally be reached on Monday through Thursday from 8 AM to 4 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Yao can be reached on (571) 272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4111

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JRS

/Sam Chuan C. Yao/
Supervisory Patent Examiner, Art Unit 4111